

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

October 16, 2001

EXCEL COMMUNICATIONS, INC.

)
)
) **DOCKET NO. 01-00357**

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on May 1, 2001, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Excel Communications, Inc. ("Excel") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, Tenn. Code Ann. § 65-4-401 *et seq.* The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404, and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations (Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*) promulgated pursuant to the Do-Not-Call statutes. "Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction." Tenn. Code Ann. § 65-4-405(f).

In February 2001, the CSD received three (3) separate complaints against Excel from

Tennessee consumers whose residential telephone numbers were properly and timely registered on the Tennessee Do-Not-Call Register. During the investigation of these complaints, the CSD determined that Excel had engaged in the solicitation of Tennessee residential telephone subscribers without registering as a telephone solicitor and obtaining the Tennessee Do-Not-Call Register, in violation of Tenn. Code Ann. § 65-4-401 and Tenn. Comp. Rules & Reg. 1220-4-11-.04(1). Excel faced a maximum civil penalty of eight thousand dollars (\$8,000) for these four (4) violations.

The proposed Settlement Agreement was negotiated as the result of the CSD's investigation into the complaints against Excel. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Excel is a large multi-state corporation with a prior history of violating the statutes and rules enforceable by the Authority. In a prior Settlement Agreement approved by the Authority on July 7, 2000, Excel agreed to “fully comply with all Tennessee laws and regulations.”¹ In the instance of the four (4) violations which are subject of this docket, Excel fully cooperated with the CSD's investigation of the above mentioned complaints. Further, Excel acted expeditiously to remedy the problem by ceasing all telemarketing activity in Tennessee and by registering as a telephone solicitor and obtaining the Do-Not-Call register from the Authority as required by

¹ See *In Re Show Cause Against Excel Telecommunications, Inc.*, TRA Docket No. 99-00794, Settlement Agreement, ¶11.1 (approved July 6, 2000)

Tenn. Comp. Rules & Reg. 1220-4-11-.04(1).

Excel was represented by legal counsel who appeared at the Authority Conference on May 1, 2001. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

IT IS THEREFORE ORDERED THAT:

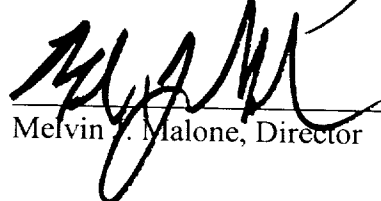
1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The amount of five thousand dollars (\$5,000) shall be paid by Excel Communications, Inc. into the Public Utilities Account of the TRA no later than May 31, 2001, thirty (30) days from the date of the Authority's approval of the Settlement Agreement.


3. Upon payment of the amount of five thousand dollars (\$5,000), Excel Communications, Inc. is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Excel Communications, Inc. to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket for the purpose of securing compliance and enforcing the Settlement Agreement.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF Tenn. Code Ann.
§ 65-4-401, *et seq.* DO-NOT-CALL SALES
SOLICITATION LAW, AND RULES OF
TENNESSEE REGULATORY AUTHORITY
CHAPTER 1220-4-11, BY:

EXCEL COMMUNICATIONS, INC.

DO NOT CALL
PROGRAM
FILE NOS.

T01-00069
T01-00094
T01-00114

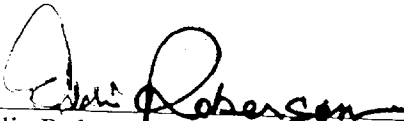
SETTLEMENT AGREEMENT

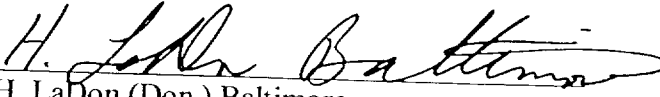
This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Excel Telecommunications ("Excel") and is subject to the approval of the directors of the TRA. The subjects of this Settlement Agreement are three (3) separate complaints received by the CSD alleging that Excel violated the Tennessee Do-Not-Call Telephone Sales Solicitation law, T.C.A. § 65-4-404, and TRA Rules and Regulations 1220-4-11-07, by making or causing to be made telephone sales solicitation calls to the residential telephone numbers of three (3) individual Tennessee consumers whose residential telephone numbers were registered on the Tennessee Do-Not-Call Register.

In an effort to resolve these three (3) complaints represented by the file numbers above, the CSD and Excel agree to settle these complaints on the following terms subject to approval by the directors of the TRA:



1. Excel acknowledges that it failed to register as a Telephone solicitor as required by the Rule 1220-4-11-.04 of the Telephone Solicitations Regulations, as a consequence, Excel did not obtain the "Do Not Call Register" as required by Rule 1220-4-11.04.
2. Excel agrees to immediately stop all telemarketing solicitation calls until the company is registered as a solicitor with the TRA.
3. Excel agrees to immediately register with the TRA and pay the five hundred (\$500) dollar registration fee.
4. Excel agrees to a settlement payment in the amount of five-thousand dollars (\$5,000.00) payable to the TRA within thirty (30) days after the directors of the TRA approve this Settlement Agreement.
5. Excel agrees to have a designated representative appear in person at the TRA conference at which time this Settlement Agreement will be considered for approval.
6. Excel agrees to comply with the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.


Eddie Roberson
Chief, Consumer Services Division


H. LaDon (Don) Baltimore
Legal Counsel for Excel